

**BEFORE THE INDIANA  
CASE REVIEW PANEL**

In The Matter of A.D.,	)	
Petitioner	)	
and	)	<b>CAUSE NO. 012402-16</b>
The Indiana High School Athletic Assoc. (IHSAA),)	)	
Respondent	)	
	)	
Review Conducted Pursuant to	)	
I.C. 20-5-63 <i>et seq.</i>	)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDERS**

**Procedural History**

This case, as well as its companion case determined the same date (In the Matter of R.S., **CRP Cause No. 013002-17**), presents a dispute of first impression for the Case Review Panel (CRP). Both disputes involve the application of **Rule C-15-2.2**, which involves participation in certain team sports during the school year but out of season (the “Participation Rule”). **Rule C-15-2.2**<sup>1</sup> reads as follows:

---

<sup>1</sup>The IHSAA has promulgated a series of by-laws as a part of its sanctioning procedures for interscholastic athletic competition. Some by-laws apply to specific genders (“B” for Boys, “G” for Girls), but most of the by-laws are “common” to all potential athletes and, hence, begin with “C.” **Rule 15**, which is concerned with participation in organized non-school sports competition, including private lessons, contains a lengthy preamble that explains the philosophical bases for the subparts found in **Rule 15**. The intent of **Rule 15** is to ensure that students have the opportunity to engage voluntarily in non-school sponsored sports provided such activities “do not interfere with the student’s educational development” and “do not conflict with “the principles of wholesome amateur athletics.” Specifically, the IHSAA is attempting to discourage “the exploitation of student athletes by over-zealous individuals and organizations who attempt to impose an obligation on the student to participate in their programs at any cost.” The rule grows out of concern that there is an increase in the “commercialism of high school athletes,” where prospective students are show-cased in a “market place” where they can display their “athletic wares.” This, in turn, has a denigrating effect upon the high school experience, undermines confidence in the high school coaches, and “gives the students an exaggerated notion of the importance of their own athletic prowess rather than reinforcing the idea that athletic ability is an endowed talent which students should use for the pleasure and satisfaction that they may derive from athletic competition.” All references are to the IHSAA’s By-Laws for the 2001-2002 school year.

**C-15-2.2 Team Sports** (Baseball, Basketball, Football, Soccer, Softball and Volleyball)

- a. Students may participate in team sport contests as members of a non-school team provided no more than the following number of students who have participated in a contest the previous year as a member of one of their school teams in that sport are members of the same non-school team, at the same time.

Baseball– 5	Football– 6	Softball– 5
Basketball– 3	Soccer– 6	Volleyball– 3

The following standards also must be met:

- (1) Participation is limited to non-school time.  
(2) Fees, if charged, must be provided solely by the student, parent or guardian. No school or athletic funds shall be used for such when students of grades 9-12 are involved.

- (3) Participation shall be open to all students.  
(4) Merchandise and awards, other than those of symbolic value, may NOT be accepted for athletic proficiency. [Emphasis original.] Student must remain an amateur.

- b. Students may not receive instruction from individuals who are members of their high school coaching staff.  
c. Coaches, from a member school coaching staff, may not instruct students who have participated in a contest as a member of their school's team. (Exception: Coaches may instruct their sons or daughters.)  
d. Member schools may not organize, supervise or operate athletic practices.  
e. Member schools may not provide school-owned uniforms (shorts, pants, singlets, or swimsuits, etc.) worn by the student in non-school contests.

Petitioner was a member of the soccer team at North Central High School, MSD of Washington Township (hereafter, “North Central”), located on the northside of Indianapolis. Although it is not altogether clear who initiated the instant action as it appears to be a group action, Petitioner, as a member of the group, sought a waiver of the application of **Rule C-15-2.2**, alleging the existence of a hardship under **Rule C-17-8**.<sup>2</sup> The Commissioner reviewed the request on

---

<sup>2</sup>**Rule C-17-8** is the IHSAA’s “Hardship Rule.” Generally, the “Hardship Rule” allows the IHSAA “to set aside the effect of any Rule [with some exceptions] when the affected party establishes, to the reasonable satisfaction of [the IHSAA], all of the following conditions are met:

- a. Strict enforcement of the Rule in the particular case will not serve to accomplish the purpose of the Rule;  
b. The spirit of the Rule has not been violated; and  
c. There exists in the particular case circumstances showing an undue hardship that would result from enforcement of the Rule.” **Rule C-17-8.1.**

The IHSAA, on its own initiative, can grant an exception under the “Hardship Rule,” but a

November 6, 2001, but denied the relief sought. The Commissioner's decision was appealed, under **Rule C-17-4**, to the IHSAA Case Review Committee (hereafter, Review Committee) on November 27, 2001. The Review Committee conducted its proceedings on January 10, 2002, and issued its written decision on January 22, 2002, upholding the Commissioner's original decision.

In its decision, the Review Committee made pertinent findings, notably that the affected non-school athletic team is a soccer club composed of male players who are 17 years of age or younger. The soccer club is affiliated with the Indiana Youth Soccer Association (IYSA) and competes in tournaments in and outside of Indiana. Petitioner played for this soccer club two years ago (1999-2000 season) but did not play on the soccer team last year because of the application of **Rule C-15-2.2**, a decision that he did not challenge. He chose to play on another team during the 2000-2001 season. The club season begins in late fall and concludes in late spring. Tryouts occur in the fall. At the fall 2001 tryouts for the 2001-2002 season, seven (7) players who played for North Central's soccer team during the 2001 high school season tried out. Six of the players made the soccer club team. The seventh player is the Petitioner in the companion case. The Petitioner in this matter was unable to try out for the soccer club due to a personal injury suffered during an automobile accident during the fall of 2001. The Review Committee indicated there was insufficient information to determine the skill level of Petitioner vis-a-vis the six North Central team members who did make the soccer club or the seventh team member, Petitioner in the companion matter.

The soccer club provides an opportunity to be seen by potential college recruiters. Participation on this soccer club team enhances this opportunity.

The Review Committee concluded that **Rule C-15.2.2** would not apply to Petitioner because he never tried out for and was not a member of the soccer club. Petitioner has not presented a "live issue," as the Review Committee termed it. Rather, Petitioner sought a ruling in case he should be afforded an opportunity to try out. Nevertheless, the Review Committee ruled that Petitioner would not be able to play on this soccer club due to the application of **Rule C-15-2.2**. Additionally, Petitioner failed to demonstrate that he qualifies under any of the categories for application of the "Hardship Rule," **Rule C-17-8**. To permit Petitioner to play on the soccer club team, assuming he made the soccer club team, would allow more than six members of the North Central soccer team to play and practice outside IHSAA-established seasons for high school teams to practice. This would provide "a significant advantage for the North Central soccer program," which it "would enjoy over every other high school soccer program in the state." This would defeat the purpose of the IHSAA's by-law. Further, Petitioner will suffer no hardship. He wishes to play for this soccer club. However, he is not being prevented from playing on other soccer club teams.

---

member school cannot do so. **Rule C-17-8.2**.

## APPEAL TO THE CASE REVIEW PANEL

Petitioner appealed the adverse decision of the Review Committee to the Indiana Case Review Panel (CRP) on January 24, 2002.<sup>3</sup> The CRP notified the parties by memorandum of that date of their respective hearing rights. The parent was provided with a “Consent to Disclose Student Information.”<sup>4</sup> A hearing date was set for February 27, 2002, but was later cancelled due to inclement weather. The hearing was rescheduled for March 26, 2002; however, Respondent, by counsel, requested on March 13, 2002, a continuance due to the unavailability of a key witness and trial conflicts of Respondent’s counsel. The CRP granted the continuance and issued an order to that effect on March 14, 2002. The hearing was rescheduled for April 8, 2002. The record of the proceedings before the Review Committee were photocopied and transmitted to CRP members on February 12, 2002.

On April 1, 2002, Respondent, pursuant to the Administrative Orders and Procedures Act (AOPA), I.C. 4-21.5-3-23, moved for Summary Judgment, asserting that there are no genuine issues of material fact that would either avoid the Participation Rule (**Rule C-15**) or invoke the Hardship Rule (**Rule C-17-8**). The Respondent’s Motion recited facts from the record and included an affidavit from Blake Ress, the Commissioner for the IHSAA. I.C. 4-21.5-3-23 does not contain any time frame within which the opposing party could respond. Additionally, the Motion arrived when many of the CRP members were on spring vacation.

The AOPA, specifically I.C. 4-21.5-3-23, does not provide a time frame within which to respond to a Motion for Summary Judgment. The Indiana Trial Rules, which are often employed where the AOPA is silent,<sup>5</sup> provide for a thirty (30) day period to respond to such Motions in civil

---

<sup>3</sup>The CRP is a nine-member adjudicatory body appointed by the Indiana State Superintendent of Public Instruction. The State Superintendent or her designee serves as the chair. The CRP is a public entity and not a private one. Its function is to review final student-eligibility decisions of the IHSAA, when a parent or guardian so requests. Its decisions are to be student-specific, applying only to the case before the CRP. The CRP’s decision does not affect any By-Law of the IHSAA.

<sup>4</sup>Although the parent indicated that she authorized the hearing in this matter to be open to the public, the parent for the other Petitioner indicated that she did not wish for the proceedings to be open to the public. Because both Petitioners wished to present their case to the CRP at the same sitting, the hearing was closed to the public.

<sup>5</sup>See, e.g., I.C. 4-21.5-3-22(a).

proceedings. See Trial Rule 56(C). However, given the delays already occasioned in this matter, another continuance was not advisable. Accordingly, the parties were notified on April 4, 2002, that the CRP would entertain argument on the Motion prior to the conduct of the hearing, as already scheduled for April 8, 2002.<sup>6</sup>

The parties appeared on April 8, 2002, and argued the Motion for Summary Judgment.<sup>7</sup> After the Motion was argued, the CRP took the matter under advisement and directed Petitioner to present direct testimony, as permitted by I.C. 4-21.5-3-23(e). The proceedings were somewhat awkward in that Petitioner in this matter and Petitioner in the companion matter wished to present their cases at the same sitting, with the CRP considering testimony provided as applicable to both decisions. The CRP obliged the parties in this respect.

Petitioner in this matter presented four (4) additional documents for consideration. These documents were marked as follows:

- P-1: A purported copy of the IHSAA's Rule 15 as published July 1, 1982.
- P-2: A listing of purported penalties assessed by the IHSAA for various violations of its by-laws.
- P-3: "Unpublished Interpretation" of the Participation Rule by the IHSAA Commissioner.
- P-4: Excerpts from IHSAA v. Durham, 748 N.E.2d 404 (Ind. App. 2001).

Respondent posed objections to P-1 (relevancy, lack of authenticity, hearsay), P-2 (same), and P-3 (record speaks for itself, Commissioner is present to testify, hearsay). Respondent also

---

<sup>6</sup>The timing of the Motion for Summary Judgment was awkward. However, as will be noted later, the Motion for Summary Judgment was denied. Petitioner was permitted to present his case. However, for purpose of clarifying concerns raised by the Petitioner, a Motion for Summary Judgment has to be served five (5) days before the time fixed for the hearing on the motion. These are not "business days" but "calendar days." If the fifth day falls on a weekend, holiday, or date when the Indiana Department of Education (IDOE) is closed (IDOE serves as the agent for receipt for pleadings for the CRP), the fifth day will be the next business day of the IDOE. See I.C. 4-21.5-3-2(b). I.C. 4-21.5-3-23(b) is somewhat ambiguous in that the time is computed from when the Motion for Summary Judgment is served, but it doesn't state upon whom service is to be made in order to "start the clock." The Motion was timely served on the CRP under I.C. 4-21.5-3-1(f), but the CRP had not set a date for hearing on the Motion, as contemplated by statute. In the interest of judicial economy, the parties were notified that they would argue the matter prior to the conduct of the hearing, but this was to be on the original date for the hearing, April 8, 2002, and not five (5) days "before the time fixed for the hearing on the motion." In order to accommodate future parties and similar motions, such motions would need to be filed as soon as practicable in order to provide the adverse party adequate time to respond and to set a date for argument on the motion.

<sup>7</sup>CRP Members Michael L. Ross and Brad Tucker did not participate in this matter.

objected to an excerpt of the Durham decision being presented, noting that the CRP can take official notice of such published opinions and, should it consider Durham, should consider the entire opinion and not merely an excerpt. The Respondent's objections were accepted and noted. The CRP can take official notice of such published opinions, see I.C. 4-21.5-3-26(f)(1). The CRP took official notice of the entire opinion in Durham. The parties were permitted to refer to the objected-to documents, and did so. However, due to the sustained objections on the basis of hearsay, no order will be based upon these exhibits. I.C. 4-21.5-3-26(a).

The following Findings of Fact are based upon the evidence in the record of these proceedings, including those matters officially noticed in this proceeding. All Findings of Fact must be, and are, based upon evidence presented that is substantial and reliable. I.C. 4-21.5-3-27(d).

### FINDINGS OF FACT

1. Petitioner is enrolled in North Central as a junior. He played on the North Central soccer team in the fall of the 2001-2002 school year. He has, in the past, participated as a member of a soccer club that has been dominant in its league play, winning the "state cup" the past three years and four out of the past five years.
2. Petitioner was not able to play for this soccer club last year (school year 2000-2001) as he was not among the top six (6) players from North Central trying out for the soccer club. The IHSAA's **Rule C-15-2.2** prevents more than six players from any high school soccer team to play for a soccer club at the same time.<sup>8</sup> The reason Petitioner did not make the soccer club was purportedly because of an application of this rule. Petitioner, after not making the soccer club in school year 2000-2001 school year, played for another soccer club. He did not allege any hardship or otherwise challenge the application of the "Participation Rule."
3. Petitioner intended to try out for the soccer club again this year, but prior to the four-day try-out period conducted in fall after completion of the high school soccer season, Petitioner was involved in a traffic accident, breaking both of his ankles. However, six other North Central players did try out for the soccer club and did make the 18-man roster. A seventh North Central player, the Petitioner in the companion case, had been the soccer club's leading scorer in the past and is positioned in front of this Petitioner.
4. Petitioner acknowledges that there are other soccer clubs in the metropolitan Indianapolis area, but his desire is to play for this particular soccer club. Petitioner asserts that there are no "comparable" soccer clubs in the area but does not deny that there are other soccer clubs for his age group.

---

<sup>8</sup>The IHSAA also refers to this rule informally as the "60% Rule," primarily because its predecessor was known as the "40% rule."

5. Unlike Petitioner in the companion case, this Petitioner has not demonstrated that he would have made the 18-man roster but for the application of the “Participation Rule.” At present, the roster for the soccer club has 17-members with the 18<sup>th</sup> slot held for Petitioner in the companion case should the CRP find that Petitioner in the companion case met the requirements for application of the “Hardship Rule.”
6. The IHSAA’s “Participation Rule,” as applied to team sports,<sup>9</sup> is intended to discourage year-round specialization in a particular sport, with the concomitant creation of a “powerhouse” in a given team sport. The rule is also intended to lessen the pressure on coaches and students to compete year-round in order to remain competitive, and would allow students to pursue other high school sports and school activities. The “Participation Rule” was described by several witnesses as designed to provide “a level playing field” for all high school teams engaged in team competition, and that the limitations on the number of student-athletes from the same high school team who can play on the same non-school, out-of-season club is designed to achieve these ends.<sup>10</sup>
7. There was credible testimony that students are experiencing increased pressures from unscrupulous coaches, both in IHSAA-member schools and on non-school sponsored teams, to “specialize” in a given team sport, with possible recriminations if a student-athlete does not do so.
8. There was direct and credible testimony from representatives of other IHSAA-member schools that permitting additional members from the same high school to participate in a non-school, out-of-season team sport provides a decided advantage. This, in turn, encourages other coaches, student-athletes, and parents to seek the same advantage in order to remain “competitive.”<sup>11</sup>
9. Petitioner also appears to assert a “safety” reason, claiming that should he have to play for any other metropolitan area soccer club, the driving to and from practice would pose a hazard, given the traffic volume in the Indianapolis area. However, Petitioner provided

---

<sup>9</sup>Individual sports, such as cross country, track and field, golf, swimming, tennis, wrestling, and gymnastics, are addressed separately in the IHSAA’s by-laws.

<sup>10</sup>There were other reasons proffered in support of the “Participation Rule,” but the ones stated in this Finding of Fact are sufficient as the CRP concludes the rule is rationally related to the goals and functions of the IHSAA and is in concert with the intentions of its member schools. Although there was differing testimony as to how many other states have the same or similar rule, this is not relevant.

<sup>11</sup>CRP Member Mark Mason noted for the record that one of the witnesses, Mick Newport, who is presently the principal at Terre Haute North High School in Vigo County, was once the principal at Shelbyville High School, where Mr. Mason’s children were in attendance.

no evidence to support this. In the record submitted to the CRP, Petitioner's testimony indicated that student-athletes were driving to Indianapolis from as far away as Tipton County and Terre Haute in order to participate on the soccer club (Transcript, Record, p. 48). The distance to travel was not characterized as a safety factor. Petitioner's driving record is apparently not very good (Transcript, Record, p. 48), but why this is so is unclear, as is its application to this matter. The fact that it may take longer to travel to one soccer club practice as opposed to this soccer club (IHSAA Record, p. 168) is more a matter of inconvenience.

10. Petitioner also asserts the "Participation Rule" violates student rights secured to North Central students by the public school district and that the rule in some fashion discriminates against Petitioner. However, Petitioner never detailed any such conflict or alleged discriminatory effect beyond this assertion. Petitioner does acknowledge that there is no constitutional right to participate in athletics.
11. Petitioner asserted various other claims, which are difficult to define. To the extent that the Petitioner is alleging an "equal protection" claim or that the "Participation Rule" is vague and that enforcement is selective, a plain reading of the rule is clear and unequivocal. As to enforcement, penalties for violation of the "Participation Rule" are detailed at **Rule C-15-4** by reference to the penalties at **Rule C-17-7.1**, which include, *inter alia*, that the IHSAA may declare a student "ineligible to participate in interschool athletics for a period *not to exceed* 365 days" (emphasis added). The rule does not require a student to be ineligible for 365 days, and the testimony by the Commissioner and the documentation submitted by Petitioner indicate that the IHSAA does not declare ineligible for 365 days those students who violate the "Participation Rule"; rather, the IHSAA will declare an offending student ineligible for 15 percent of the specific sport's season, which means a football player would miss one game, a soccer player two games, and a basketball player three games, these numbers representing 15 percent of the games played in the respective sport.

#### CONCLUSIONS OF LAW

1. Although the IHSAA is a voluntary, not-for-profit corporation and is not a public entity, its decisions with respect to student eligibility to participate in interscholastic athletic competition is "state action" and for this purpose makes the IHSAA analogous to a quasi-governmental entity. IHSAA v. Carlberg, 694 N.E.2d 222 (Ind. 1997), *reh. den.* (Ind. 1998). The Case Review Panel has been created by the Indiana General Assembly to review final student eligibility decisions with respect to interscholastic athletic competition. I.C. 20-5-63 *et seq.* The Case Review Panel has jurisdiction when a parent or guardian invokes the review function of the Case Review Panel. In the instant matter, the IHSAA has rendered a final determination of student-eligibility adverse to the Student. The parents timely sought review. The Case Review Panel has jurisdiction to review and determine this matter.



2. Any Finding of Fact that could be considered a Conclusion of Law shall be considered as same. Any Conclusion of Law that could be considered a Finding of Fact shall be considered as such.
3. The IHSAA does not except application of its “Hardship Rule” to **Rule C-15**. The “Hardship Rule” is, essentially, an equitable consideration that permits participation by a student-athlete because of extraordinary circumstances. Although Petitioner appears to complain that the rule is vague in some respect, permitting arbitrary interpretations and capricious applications, any rule of equity—which the Hardship Rule is—defies precise definition. Rather, what constitutes “equity” may likely be determined through consideration of mitigating principles or circumstances, which, in turn, will serve to ameliorate a strict application of an otherwise valid standard or law so as to avoid a substantial injustice. These concepts were employed in IHSAA v. Durham, 748 N.E.2d 404 (Ind. App. 2001), a decision both parties urge the CRP to consider. The Durham court criticized the IHSAA for employing an “income test” that it did not include in its by-laws when deciding that a student’s transfer from a private school to a public school did not merit application of the “Hardship Rule.” Divorce had resulted in a 67 percent decrease in family income with financial obligations (two mortgages, tax lien) further aggravating the personal circumstances. Although this did not result in poverty, poverty status was not necessary in order to come within the requirements of the Hardship Rule. 748 N.E.2d at 406-09. The appellate court indicated that the IHSAA does have to have standards upon which to base its decisions, and that trial courts would have jurisdiction to determine whether the denial of a hardship exception was arbitrary and capricious on the IHSAA’s part. 748 N.E.2d at 413, 414. The question, then, becomes one of whether the IHSAA, in determining Petitioner does not meet the requirements of the “Hardship Rule,” was a reasonable one with a rational basis.
4. Under the “General Consideration” for **Rule C-17-8.4**, “[o]rdinary cases shall not be considered hardship...” The situation giving rise to the alleged hardship “must be beyond the control of the school, the coach, the student, the parents....” Although “injury, illness or accidents” are “possible causes for a hardship consideration,” such occasions are related to meeting “a basic requirement” for participation. Evidence and testimony indicate the Petitioner has not failed to meet “a basic requirement” for participation. As a consequence, this subpart does not apply. Evidence and testimony indicate the Petitioner desires to play for a particular soccer club, and that playing for another soccer club would not be convenient. Personal preferences and matters of convenience do not constitute a “hardship” such that **Rule C-15-2.2** should be relaxed for this Petitioner. The IHSAA’s finding of no hardship with respect to Petitioner was reasonable.
5. The Indiana Supreme Court in IHSAA v. Carlberg, 694 N.E.2d 222, 228-29 (Ind. 1997), *reh. den.* (Ind. 1998), noted that “there is no right or interest to participate in interscholastic sports that is entitled to protection under the federal Equal Protection or Due Process Clauses or the state Due Course of Law Clause.... Thus, scrutiny of IHSAA

decisions under the Equal Protection and Due Process Clauses will generally be limited to whether they impinge upon a suspect classification and whether they have a rational basis.... Scrutiny under the Privileges and Immunities Clause will generally be limited to whether they have a reasonable basis....” The IHSAA articulated a rational basis for **Rule C-15-2.2** and its application to Petitioner and others similarly situated. Its application of the rule has a reasonable basis, for the reasons stated in the Findings of Fact *supra*. Petitioner has not demonstrated through credible evidence or testimony that the basis for the “Participation Rule” is either irrational or unreasonable. The fact that not all states—or even a majority of states—do not have the same or similar rule does not alter this analysis or conclusion.

#### ORDERS

1. The Respondent’s Motion for Summary Judgment is denied. (Vote of CRP was 7-0 in this respect.)
2. Petitioner does not meet the requirements for application of the Hardship Rule so as to relax the requirements of the Participation Rule. The Respondent’s decision in this regard is upheld. (Vote of CRP was 6-1 in this respect.)

DATE: April 11, 2002

/s/ John L. Earnest, Chair  
Indiana Case Review Panel

#### APPEAL RIGHT

Any party aggrieved by the decision of the Case Review Panel has thirty (30) calendar days from receipt of this written decision to seek judicial review in a civil court with jurisdiction, as provided by I.C. 4-21.5-5-5.